

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CA 06-730

FEBRUARY 7, 2007

CONAGRA POULTRY COMPANY
APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F307543]

V.

BRENDA YOUNG

APPELLEE

AFFIRMED

Appellee Brenda Young brought a workers' compensation claim against appellant Conagra Poultry Company, alleging that she sustained a compensable gradual-onset neck injury as well as carpal tunnel syndrome during her employment with the appellant. The Workers' Compensation Commission denied compensability for the alleged carpal tunnel injury, and that decision is not at issue on appeal. The Commission further ruled that Ms. Young proved that she sustained a compensable neck injury, and awarded related medical benefits as well as temporary total disability benefits from February 19, 2003, through May 23, 2003. Conagra now appeals from that ruling, arguing that substantial evidence does not support the Commission's decision that Ms. Young established the elements of compensability for a gradual-onset neck injury. We affirm.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion. *Byars Constr. Co. v. Byars*, 72 Ark. App. 158, 34 S.W.3d 797 (2000). A decision by the Commission will not be reversed unless it is determined that fair-minded persons could not have reached the same conclusions if presented with the same facts. *Stiger v. State Line Tire Serv.*, 72 Ark. App. 250, 35 S.W.3d 335 (2000).

Ms. Young testified that she began working at Conagra through a temporary agency in May 2002, and became an employee of Conagra in July 2002. She stated that she worked on an assembly line as both a "watcher" and a "stacker," and that after November 2002 she performed the stacker job practically all the time. Ms. Young explained that her job as a stacker involved standing by the assembly line with packages of chicken coming toward her. She was required to take the packages of chicken from a tray on her left, and then stack them eight-high on her right. She stated, "I would pull with the left, pass it on to the right hand, put it in the crate." According to Ms. Young, the belt was constantly moving and she had to move her head from left to right all day long.

Ms. Young testified that in January 2003 she began experiencing pain in the left side of her neck as well as numbness in her left arm, and that these symptoms occurred while

performing the stacker job. Her supervisor sent her to the nurses's office, where she reported daily for two weeks and was administered ice packs and a heating pad. When her symptoms failed to improve, Ms. Young was sent to the company doctor, Dr. Greg Smart, who saw her on February 19, 2003.

Dr. Smart detected possible signs of a stroke, took Ms. Young off work, and referred her to a neurologist, Dr. Shailesh Vora, for further evaluation. Dr. Vora ordered a nerve conduction study on February 28, 2003, which revealed "right C7-C8 nerve root partial compression." Based on a March 4, 2003, MRI study, Dr. Vora gave the impression "C5-6 disc posterior and to the right herniation with impingement of the neural foramina at that level." Dr. Vora referred Ms. Young to a neurosurgeon, Dr. P.B. Simpson, for further evaluation, and she was subsequently evaluated by Drs. Eric Akin, Warren Long, and Kenneth Gati, and received varying diagnoses regarding her neck condition.

Ms. Young testified that she has been off work since February 19, 2003, and has not since returned. She maintained that despite conservative treatment including injections and physical therapy, her symptoms have remained the same and that she is unable to work due to neck pain. Ms. Young stated that prior to working for Conagra, she had experienced no problems with her neck or shoulders. She testified, "I didn't have this trouble before I went to work at Conagra and constantly pulling those things and stacking them back and forth, turning my head and neck and picking up that weight, that's the only thing that it could have been."

Jody Works, who worked as Conagra's safety and environmental manager, gave additional testimony regarding the job requirements on the assembly line. Mr. Works stated that the job requires minimal neck movement. He further stated that the packages of chicken to be stacked by the employee come out of the machine at a rate of about thirty-six per minute.

Angela Dorsey worked at the Conagra plant, and she testified that "wings or chicken breasts are coming down the line," that "you've got to stack them fast," and that "you continue to do it over and over." Ms. Dorsey testified that Ms. Young is about 5'2", and that, "If you're short, this activity would cause you to have to use your neck in a rapid, repetitive fashion in the stacker job."

The medical evidence in this case was varying. On May 5, 2003, Dr. Simpson reported that, after reading the March 4, 2003, MRI, "I do not see any abnormality whatsoever." After ordering a cervical myelogram and CT scan, Dr. Simpson reported on May 9, 2003:

This lady really does not have anything significant on the myelogram or the post-myelogram CT. I will see her back in about two weeks if she is not any better, but I am going to let her go back to work in two weeks if she is doing well. She has a lot of giveaway-type weakness, and there is certainly not enough seen on the myelogram or post-myelogram CT to warrant surgical intervention. The radiologist points to a small non-filling of the root far laterally at C5-6. I am not sure that is significant, and she has very equivocal findings on the myelogram at that level.

The radiological interpretation from the CT scan noted a probable small herniated disc at the C5-C6 level, and the interpretation from the myelogram was a “small extradural defect on the left side of C5-C6” and that “a herniated disc cannot be ruled out.”

Dr. Akin, another neurosurgeon, reported on August 20, 2003, that an MRI of the cervical spine showed a moderate stenosis at the C7-T1 level. Dr. Akin diagnosed axial neck pain, but reported that the study he reviewed was incomplete and that he would need a complete study to explore possible surgical options. In a letter to appellee’s counsel dated May 10, 2004, Dr. Akin stated:

In response to your request for a short narrative report, I have reviewed the myelogram and post myelogram CT today and find no evidence of neural compression at any level in the cervical spine. This is consistent with her previous diagnosis of axial neck pain. I believe that she would best be treated with conservative measures including physical therapy plus or minus epidural steroid injections.

Dr. Warren Long performed an independent medical evaluation, and on September 7, 2004, reported:

This lady does not have a cervical disc The most she has in her neck is a cervical sprain [W]hen I reviewed the March 4th MRI of her neck, not all sagittals were there and I did not see the myelogram. In my wildest imagination, I do not feel she has a C7-T1 disc.

Dr. Kenneth Gati also examined Ms. Young, and on January 4, 2005, reported, “The MRI was reviewed and it shows multilevel degenerative disk disease with bulges. The bulges are seen at C5-6, C6-7, and C7-8 I have recommended for treatment at this point going ahead and getting cervical epidural steroid injections.”

In a deposition given by Dr. Vora, Dr. Vora disagreed with Dr. Simpson's assessment that the MRI showed no abnormality. Dr. Vora indicated that the MRI, myelogram, and CT scan showed an abnormality at the C5-C6 level. Dr. Vora further stated that his examination revealed tenderness and muscle spasms in the left side of Ms. Young's neck. It was Dr. Vora's opinion that Ms. Young had a C5-C6 disc herniation, and that her symptoms were the result of her work-related activities. Dr. Vora further gave the opinion that the work-related activities were the major cause of Ms. Young's need for treatment. Dr. Vora explained that Ms. Young's condition has remained about the same since he first examined her, and recommended that she not return to her previous work because the fast and repetitive movements could exacerbate her symptoms.

On appeal, Conagra argues that substantial evidence does not support the Commission's finding that Ms. Young established compensability for a gradual-onset neck injury. It initially contends that Ms. Young failed to prove that any gradual neck injury that she may have suffered was caused by rapid repetitive motion as required by Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2002).¹ Conagra further argues that any alleged injury was

¹The appellant is correct in asserting that it was appellee's burden to prove rapid repetitive motion in this case. At the time appellee's injury occurred, Ark. Code Ann. § 11-9-102(4)(A)(ii)(b) (Repl. 2002) provided that a compensable injury included, "A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence." However, our supreme court held that that statutory provision did not include cervical injuries, and thus that proof of rapid repetitive motion was required in such instances. *See Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000). While the legislature amended subsection (4)(A)(ii)(b) to include neck injuries in 2005, that amendment is inapplicable to this case.

not established by medical evidence supported by objective findings, which is a requirement set forth in Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). Conagra submits that the evidence failed to show that Ms. Young suffered from any medical conditions, noting the contrasting medical reports and emphasizing the medical opinions tending to show that no cervical injury had been sustained. Conagra cites *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001), where we held that while the Commission is empowered with the authority to weigh medical evidence and to examine the basis of an expert's opinion in deciding what weight to give it, it may not arbitrarily disregard the testimony of any witness. Appellant asserts that the trial court arbitrarily disregarded the medical opinions in this case.

We hold that Ms. Young met her burden of proving that her neck condition was caused by rapid repetitive motion. There is no question that her job was repetitive in that she was required to stand on an assembly line and constantly stack packages of chicken using a left to right motion. Moreover there was ample evidence that she was required to perform her job duties rapidly. In *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998), we held that duties requiring the employee to ensure one nut to be in place on an average of every fifteen seconds during the majority of her shift constituted rapid motion for purposes of compensability. In the present case, there was testimony that the chicken packages came out of the machine at a rate of thirty-six per minute, requiring the stacker to stack about 16,000 packages during the course of her seven-and-a-half hour

work day. Ms. Dorsey stated, “you’ve got to stack them fast.” Given this testimony, there was substantial evidence that the job required both rapid and repetitive motion.

We further hold that there was substantial evidence to support the Commission’s finding that Ms. Young’s neck injury was supported by objective medical findings. Dr. Vora diagnosed a herniated disc at C5-C6 upon reviewing the MRI, and this finding was objective in that it clearly could not come under the voluntary control of the patient. *See Ark. Code Ann. § 11-9-102(16) (Repl. 2002)*. Moreover, Dr. Vora detected muscle spasms in appellee’s neck, and our supreme court has held that muscle spasms constitute objective findings. *See Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999).

While there was conflicting medical evidence in this case, it is well settled that it is the Commission’s duty to resolve such conflicts. *See Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001). Dr. Vora expressed the opinion that Ms. Young sustained a neck herniation and that her symptoms were the result of her work-related activities. Ms. Young gave testimony that she had never experienced prior neck problems and that they began during the course of her work, causing her to be unable to perform her job. Moreover, Dr. Gati detected a bulging disc at C5-C6 and recommended further conservative treatment. While there was medical evidence to contradict Ms. Young’s claim that she sustained a compensable neck injury, there was objective medical evidence and testimony to support the Commission’s finding of compensability.

Finally, we note that Conagra challenges Ms. Young's credibility, and directs us to where she initially reported right-arm pain and then testified to the contrary; gave an unreliable effort during a functional capacity evaluation; and denied furnishing the information on her leave-of-absence request that gave "personal illness" as the reasons for the request, even though she signed the request. However, it is the Commission's duty, and not ours, to determine credibility of witnesses and weight to be given their testimony. *See Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The Commission specifically found Ms. Young to be a credible witness, and we are bound by that determination.

Affirmed.

GLOVER and MILLER, JJ., agree.